

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

	)	Case No. RED-02-0058
JOLENE LOOMIS,	)	
	)	FINDINGS OF FACT, CONCLUSIONS OF
Appellant,	)	LAW AND ORDER OF THE BOARD
	)	
v.	)	
	)	
DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent.	)	

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on November 6, 2003.

1.2 **Appearances.** Appellant Jolene Loomis was present and was represented by Edward E. Younglove III, Attorney at Law, of Parr, Younglove, Lyman & Coker, P.L.L.C. Morgan Damerow, Assistant Attorney General represented Respondent Department of Corrections.

1 1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of reduction in salary for  
2 neglect of duty and insubordination. Respondent alleges Appellant refused to follow a lawful  
3 directive from her supervisor.  
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## 6 **II. FINDINGS OF FACT**

7 2.1 Appellant Jolene Loomis is a permanent employee for Respondent Department of  
8 Corrections (DOC). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and  
9 the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with  
10 the Personnel Appeals Board on December 13, 2002.  
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12 2.2 By letter dated November 25, 2002, Mark Kucza, Deputy Regional Administrator for the  
13 DOC West Central Region, informed Appellant of her reduction in pay, from Range 49, Step K, to  
14 Step I, effective December 16, 2002 to January 15, 2003. Mr. Kucza alleged that Appellant refused  
15 to initiate and sign a letter of apology as directed by her supervisor.  
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17 2.3 Appellant has been employed by the department for approximately eight years. Appellant  
18 has not been subject to prior disciplinary or corrective action.  
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20 2.4 Kimberly Shaffer, Supervisor of the Community Corrections office in Burien, received a  
21 formal complaint from Donna Pilon, the mother of Offender P, who was assigned to Appellant's  
22 caseload. Ms. Pilon complained about an incident that occurred on March 27, 2003. In the written  
23 complaint dated April 4, 2002, Ms. Pilon alleged that Appellant spoke in a rude manner to her  
24 daughter, told her daughter to "shut up and sit down" and claimed that when she attempted to  
25 intercede on her daughter's behalf, Appellant told her "I don't need your two cents worth ... just sit  
26 there and be quiet." Ms. Pilon also claimed Appellant "proceeded to kick me out of the waiting

1 room.” Ms. Pilon asked for a letter of apology from Appellant and requested that the department  
2 place her letter of complaint in Appellant’s personnel file.

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4 2.5 On March 28, 2002, Appellant made the following entry in Offender P’s record, describing  
5 the March 27 incident:

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7 P reported as directed. When P saw me coming to the lobby door she jumped up  
8 and attempted to walk and was coming straight at me. I informed her that this  
9 was not appropriate behavior and to have a seat as I had another [client] in front  
10 of her. P’s mother became very verbal telling me P was not walking up on me  
11 etc. She [continued] her verbal abuse. At that time I informed her that due to her  
12 behavior I was requesting she leave the lobby area and wait for her daughter in  
13 the hall as her behavior was disturbing others in the lobby.

14 2.6 On May 23, 2002, Ms. Shaffer met with Appellant to discuss the complaint. Appellant  
15 denied that she did anything wrong. Ms. Shaffer directed Appellant to write a letter of apology to  
16 Ms. Pilon “indicating that it was not your intent to cause her embarrassment.” Appellant indicated  
17 that she did not know whether she could write an apology, and Ms. Shaffer gave Appellant two  
18 weeks to “consider the directive.” However, Appellant was not disciplined or counseled for the  
19 March 27 incident with Ms. Pilon or her daughter nor was there ever any determination that  
20 Appellant acted inappropriately.

21 2.7 In a June 10, 2002, memorandum of expectations, Ms. Shaffer directed Appellant to write a  
22 letter of apology to Ms. Pilon. Appellant subsequently drafted a letter to Ms. Pilon, which she  
23 submitted to Ms. Shaffer for review. Ms. Shaffer was not satisfied with the letter, and she shared  
24 her concerns with Kathy Bouta, Field Administrator, who agreed that Appellant’s letter was  
25 inadequate. Ms. Shaffer made corrections to the letter and in a memo dated July 2, she directed  
26 Appellant to make some corrections and add the word “apology” or “apologize” to the body of the  
letter.

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2 2.8 On July 3, Appellant wrote a memo to Ms. Shaffer indicating she had made the grammatical  
3 corrections but that she would not comply with the directive to use the word “apology” in the letter.  
4 Appellant wrote: “I cannot do that even with the threat of disciplinary action. I stand firm in my  
5 belief that I have done nothing wrong. ...” Appellant’s letter to Ms. Pilon read as follows:

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7 This letter is to inform you that it was not my intent to cause you embarrassment.  
8 My objective was to keep peace in the lobby area due to safety issues.  
9 Unfortunately, I was informed you feel this misunderstanding was embarrassing to  
10 you and again I want to clarify that this was not my intent.

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12 2.9 On July 18, 2002, Ms. Shaffer initiated an Employee Conduct Report against Appellant for  
13 her failure to comply with the directive to include the word “apologize” or “apology” in the letter to  
14 Ms. Pilon. During the investigation, Appellant stated that she could not apologize because she felt  
15 she did nothing wrong, that to apologize would be a lie and that she would not lie.

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17 2.10 The investigative report was forwarded to Mark Kucza, Appellant’s appointing authority.  
18 Mr. Kucza did not discipline Appellant for the incident that occurred in the lobby; however, after  
19 reading Appellant’s letter to Ms. Pilon, he concluded the letter did not appropriately convey the  
20 right message. In his view, the letter of apology would have been “invaluable in mitigating the  
21 impact of the earlier incident.”

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23 2.11 Mr. Kucza concluded Appellant was given a lawful directive by a supervisor and that she  
24 had a duty as an employee to carry out that directive. Mr. Kucza believed it was a “simple matter to  
25 use the word apology and apologize,” and he concluded Appellant engaged in misconduct by  
26 refusing to use the words in her letter to Ms. Pilon. Mr. Kucza considered imposing a lesser  
corrective measure, such as a letter of counseling, but he concluded that Appellant’s actions

1 warranted a more severe penalty because she chose to be insubordinate rather than resolve the  
2 situation in the manner instructed by her supervisor.

### 3 4 **III. ARGUMENTS OF THE PARTIES**

5 3.1 Respondent argues that Appellant was insubordinate when she was given a directive by her  
6 supervisor and refused to comply. Respondent argues that Appellant's refusal to follow the  
7 directive that she use the word apology or apologize had a detrimental impact on the department  
8 and her supervisors, because the integrity of the agency and the public's perception of the agency  
9 must be protected. Respondent acknowledges there was a difference in perceptions about the  
10 incident, but that the department wanted Appellant to write the letter of apology to straighten out  
11 the matter. Respondent asserts that Appellant's letter did not meet the expectations of the  
12 department and exacerbated the situation. Respondent asserts the one month reduction in salary  
13 was appropriate for Appellant's willful refusal to follow a directive.

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15 3.2 Appellant asserts that the department's directive that she use the word apology was not  
16 reasonable because she did nothing inappropriate and to apologize was not the moral thing to do.  
17 Appellant argues she had no duty to apologize under the circumstances. Appellant contends the  
18 department has the power and a responsibility to only require employees to do things that are  
19 reasonable, lawful and appropriate in their employment, and that employees who feel they are being  
20 asked to do something immoral have the right to refuse.

### 21 22 **IV. CONCLUSIONS OF LAW**

23 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

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25 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
26 the charges upon which the action was initiated by proving by a preponderance of the credible

1 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
2 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
3 Corrections, PAB No. D82-084 (1983).

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5 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
6 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
7 of Social & Health Services, PAB No. D86-119 (1987).

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9 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
10 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.  
11 Dep't of Social & Health Services, PAB No. D94-025 (1995).

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13 4.5 Respondent has not met its burden of proving, by a preponderance of the credible evidence,  
14 that Appellant's refusal to use the word apology in her letter to Ms. Pilon constituted a neglect of  
15 duty or insubordination. We agree that state employees are accountable to the public; however, in  
16 the instance here, there was no evidence that Appellant engaged in misconduct, acted  
17 inappropriately during her interaction with Ms. Pilon or acted in such a way that required a public  
18 employee to apologize to a private citizen. Appellant made a reasonable attempt to address the  
19 department's concerns when she drafted a letter to Ms. Pilon acknowledging the misunderstanding.  
20 Under the circumstances, Appellant's refusal to use the word apology was reasonable. Therefore,  
21 the appeal of Jolene Loomis should be granted.

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**V. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jolene Loomis is granted.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

\_\_\_\_\_  
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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Busse Nutley, Member